



## Senate

General Assembly

**File No. 24**

*January Session, 2001*

Substitute Senate Bill No. 1048

*Senate, March 8, 2001*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING COSTS OF INCARCERATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (a) In the case of causes of action of any person
- 2 obligated to pay the costs of such person's incarceration under section
- 3 18-85a of the general statutes and regulations adopted in accordance
- 4 with said section, the claim of the state shall be a lien against the
- 5 proceeds therefrom in the amount of the costs of incarceration or fifty
- 6 per cent of the proceeds received by such person after payment of all
- 7 expenses connected with the cause of action, whichever is less, for
- 8 repayment under said section, and shall have priority over all other
- 9 claims including any lien of the state for repayment of public
- 10 assistance except (1) attorney's fees for said causes, (2) expenses of suit,
- 11 (3) costs of hospitalization connected with the cause of action by
- 12 whomever paid over and above hospital insurance or other such
- 13 benefits, and, for such period of hospitalization as was not paid for by
- 14 the state, physicians' fees for services during any such period as are
- 15 connected with the cause of action over and above medical insurance

16 or other such benefits, (4) restitution or payment of compensation to a  
17 crime victim ordered by a court of competent jurisdiction, and (5)  
18 payment of a civil judgment rendered in favor of a crime victim by a  
19 court of competent jurisdiction; and such claim shall consist of the total  
20 amount of the costs of incarceration under section 18-85a of the general  
21 statutes. The proceeds of such causes of action shall be assignable to  
22 the state for payment of the amount due under section 18-85a of the  
23 general statutes, irrespective of any other provision of law. The state's  
24 lien shall constitute an irrevocable direction to the attorney for the  
25 inmate to pay the Commissioner of Correction or the commissioner's  
26 designee in accordance with its terms, except if, after written notice  
27 from the attorney for the inmate informing the commissioner or the  
28 commissioner's designee of the settlement of the cause of action or  
29 judgment thereon and requesting the amount of the lien to be paid to  
30 the commissioner or the commissioner's designee, the commissioner or  
31 the commissioner's designee does not inform such attorney of the  
32 amount of the state's lien within forty-five days of receipt of the  
33 written request of such attorney for such information, such attorney  
34 may distribute such proceeds to such inmate and shall not be liable for  
35 any loss the state may sustain thereby.

36 (b) In the case of an inheritance of an estate by any person who is  
37 obligated to pay the costs of such person's incarceration in accordance  
38 with section 18-85a of the general statutes and the regulations adopted  
39 under said section, the claim of the state shall be a lien against such  
40 inheritance in the amount of the costs of incarceration or fifty per cent  
41 of the assets of the estate payable to the inmate, whichever is less. The  
42 Court of Probate shall accept any such lien notice filed by the  
43 commissioner or the commissioner's designee with the court prior to  
44 the distribution of such inheritance, and to the extent of such  
45 inheritance not already distributed, the court shall order distribution in  
46 accordance therewith.

47 Sec. 2. (NEW) Upon the death of any person obligated to pay the

48 costs of such person's incarceration under section 18-85a of the general  
49 statutes and regulations adopted in accordance with said section, the  
50 state shall have a claim against such person's estate for all costs of  
51 incarceration under the provisions of said section and regulations for  
52 which the state has not been reimbursed, to the extent that the amount  
53 which the surviving spouse, parent or dependent children of the  
54 decedent would otherwise take from such estate is not needed for their  
55 support. Such claim shall have priority over all other unsecured claims  
56 against such estate, including any lien of the state for repayment of  
57 public assistance, except (1) expenses of last sickness not to exceed  
58 three hundred seventy-five dollars, (2) funeral and burial expenses in  
59 accordance with that allowed under section 17b-84 of the general  
60 statutes upon the death of a beneficiary of aid, (3) restitution or  
61 payment of compensation to a crime victim ordered by a court of  
62 competent jurisdiction, (4) payment of a civil judgment rendered in  
63 favor of a crime victim by a court of competent jurisdiction, and (5)  
64 administrative expenses, including probate fees and taxes, and  
65 including fiduciary fees not exceeding the following commissions on  
66 the value of the whole estates accounted for by such fiduciaries: On the  
67 first two thousand dollars or portion thereof, five per cent; on the next  
68 eight thousand dollars or portion thereof, four per cent; on the excess  
69 over ten thousand dollars, three per cent. Upon petition by any  
70 fiduciary, the Court of Probate, after a hearing thereon, may authorize  
71 compensation in excess of the above schedule for extraordinary  
72 services. Notice of any such petition and hearing shall be given to the  
73 Commissioner of Correction at least ten days in advance of such  
74 hearing. The allowable funeral and burial payment authorized by this  
75 section shall be reduced by the amount of any prepaid funeral  
76 arrangement. Any amount paid from the estate under this section to  
77 any person that exceeds the limits provided in this section shall be  
78 repaid to the estate by such person, and such amount may be  
79 recovered in a civil action with interest at the legal rate from the date  
80 of demand.

81      Sec. 3. This act shall take effect from its passage.

**JUD**      *JOINT FAVORABLE SUBST.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

---

**OFA Fiscal Note**

**State Impact:** Potential Revenue Gain, Minimal Cost

**Affected Agencies:** Department of Correction, Department of Administrative Services

**Municipal Impact:** None

**Explanation****State Impact:**

Under C.G.S. Section 18-85a, the Department of Correction (DOC) can assess inmates of correctional facilities for the costs of their incarceration. Furthermore, under C.G.S. Section 18-101, DOC collects all inmate compensation and disburses these funds according to a priority list, which includes taxes, payment to victims, dependent support, travel and incidental expenses, and board costs. This bill allows DOC to collect money owed by an inmate for the costs of incarceration from an inmate's estate, inheritance, or lawsuit proceeds.

Passage of the bill will result in a potential revenue gain. The bill indicates that an incarceration lien would take priority over any public assistance lien; but because the effect of incarceration liens is somewhat indeterminate, it is unknown how the passage of this bill would influence public assistance liens.

DOC currently charges inmates for the costs of certain services and

programs such as sick calls, dental procedures, eyeglasses, elective and vocational educational programs, extended family visits, and lab tests for detecting illegal drugs. These charges have amounted to annual revenues of approximately \$100,000 in FY 98, FY 99, and FY 00. It is not projected that there will be any significant changes in FY 01. The annual cost to incarcerate an individual is approximately \$25,000. Cost per day reaches as high as \$130 at the state's maximum-security facility and \$90-\$95 at the state's female and youth facilities. The average incarceration cost per day is approximately \$70.

Finally, the bill indicates that the DOC commissioner or his designee is responsible for filing such liens. It should be noted that the Department of Administrative Services (DAS) would probably serve as the commissioner's designee. This would result in minimal costs to DAS that would be absorbed within existing appropriations.

---

**OLR Bill Analysis**

sSB 1048

**AN ACT CONCERNING COSTS OF INCARCERATION.****SUMMARY:**

This bill allows the state to collect money owed by certain inmates for the cost of their incarceration from their estates after their deaths or from money or property they obtain through lawsuits or inheritance. The bill makes the state's claim a lien against lawsuit or inheritance money or property, gives this lien priority (with certain exceptions), and allows the state to collect up to the total cost of the incarceration or 50% of the property or money obtained whichever is less. The state's claim against a deceased person's estate has priority over unsecured claims except for court-ordered restitution or compensation to a crime victim, payment of a civil judgment to a crime victim, and certain expenses.

EFFECTIVE DATE: Upon passage

**LAWSUIT PROCEEDS**

Under the bill, whenever a person who owes the state money for the cost of his incarceration wins a lawsuit judgment, the state's claim is a lien against the proceeds. The maximum amount of the claim is the full cost of the inmate's incarceration or 50% of the proceeds, minus certain expenses, whichever is less.

The incarceration lien has priority over all other claims, including any state lien for repayment of public assistance, except (1) expenses of the lawsuit, including attorney's fees; (2) hospitalization costs connected with the lawsuit not paid by insurance or other benefits; (3) physicians' fees associated with the hospitalization period that the state has not paid for and that insurance or other benefits do not cover; (3) court-ordered restitution or compensation to a crime victim; and (4) payment of a civil judgment to a crime victim.

The bill makes the proceeds assignable to the state and the lien requires the inmate's attorney to pay the Department of Correction (DOC) commissioner from the proceeds. But, if the attorney gives the commissioner written notice of a settlement or judgment that requests the lien amount and the commissioner does not respond within 45 days with the lien amount, the attorney can distribute the proceeds to the inmate and is not liable to the state.

## **INHERITANCE**

When an inmate inherits property or money, his obligation is the total cost of his incarceration or 50% of the inheritance, whichever is less. There is no reduction in this amount. The bill directs the probate court to accept any lien notice that the DOC commissioner or his designee files and, to the extent the estate has not already been paid out, order the estate distributed accordingly.

## **DEATH OF PERSON OWING COSTS OF INCARCERATION**

Under the bill, when someone dies who owes the state money for the cost of his incarceration, the state has a lien against his estate. The amount of the lien is up to the total cost of his incarceration to the extent the estate is not needed to support his surviving spouse, parent, or dependent children. The bill gives the lien priority over all other unsecured claims, including public assistance liens, except for (1) up to \$375 for the expenses of his last sickness; (2) up to \$1,200 for funeral and burial expenses; (3) court-ordered restitution or compensation to a crime victim; (4) payment of a civil judgment to a crime victim; and (5) administrative expenses, including probate taxes and fees and fiduciary fees up to certain limits. If the person has a prepaid funeral arrangement, the funeral and burial exception amount must be reduced by the amount of the arrangement.

The bill limits fiduciary fees, based on the value of the estate, to 5% for the first \$2,000; 4% for the next \$8,000; and 3% for the remainder. The bill authorizes the probate court, after a hearing with a 10-day notice to the DOC commissioner, to authorize payment above these levels for extraordinary services.



If any amount exceeding these limits has been paid from the estate, the bill requires the person who received it to repay the estate and allows the state to recover the amount, with interest at the legal rate (8%), by civil suit.

## **BACKGROUND**

### ***Inmate Liability for Costs of Incarceration***

By statute, the DOC commissioner must adopt regulations concerning assessing inmates for the costs of their incarceration. The regulations require the commissioner, as of October 1, 1997, to charge inmates for the costs of their use of various services and programs. An inmate is a person confined or formerly confined in a correctional facility under a sentence imposed by a Connecticut state court. The regulations define the per-inmate, per-day cost of incarceration at DOC facilities to be the amount computed using the same accounting procedures the comptroller uses to calculate such costs for state humane institutions. The regulations also make inmates responsible for the costs of certain services and programs such as sick calls; dental procedures; eyeglasses; elective and vocational educational programs; extended family visits; and lab tests to detect illegal drugs, if the results are positive.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 39      Nay 0